Jim Doyle
Governor

WISCONSIN REGULATORY DIGEST

A Publication of the
MEDICAL EXAMINING BOARD

No. 1 **February, 2003**

Message from the Chair,
Darold Treffert, M.D.

The end of the year is a time for reflection and evaluation of goals and achievements. The focus of the Wisconsin Medical Examining Board (WMEB) over the past year has remained on evaluating complaints and deciding cases. Through November 2002, the WMEB received and screened 450 complaints from the public, issued orders in more than 80 disciplinary actions, and has now pending, 168 complaints. Having been part of this Board for eight years, and having watched it in action for a much longer time, I have no doubt that the present Board is as responsible and diligent as any Medical Board in any State in matters of licensure and especially in the area of professional discipline.

MEDICAL EXAMINING BOARD

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Disciplinary Actions and Rehabilitation

The purpose of discipline is to protect the public and deter others from similar misconduct and promote rehabilitation. Through experience the WMEB has concluded that disciplinary actions should be tailored to fit the violation, with the principal concern being how best to protect the public. If an otherwise competent practitioner who is being treated for alcoholism is able to maintain sobriety under a rigid Board order requiring regular testing, reporting and monitoring, it makes little sense for the Board to demand a period of license suspension. If a physician whose patient records are substandard or incomplete is able to correct deficient practice by completing a course in recordkeeping, public protection may be best served by demanding that the doctor complete the course and then monitoring performance. In some cases public protection is best served by requiring supervision, monitoring or additional education or by limiting practice. Of course there are also many instances where the nature of a violation warrants a suspension or revocation in order to deter others and safeguard the public.

The Annual Public Citizen Rating

In recent years an annual press release of the Public Citizen's Health Research Group (HRG) has ranked Wisconsin low in taking serious disciplinary actions as compared with other states. Some of the conclusions reached

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by HRG I find unsubstantiated and merely provocative. For example, in 2001 HRG charged that, "It is extremely likely that patients are being injured or killed more often in states with poor doctor disciplinary records than in states with consistent top performances." No facts or data on patient injuries or deaths are referenced in the report to support this inflammatory charge. Other HRG conclusions, such as the HRG decision on what discipline is "serious," rest on a narrow and arbitrary view of the disciplinary process.

There is no uniformity in definitions and reporting of disciplinary actions among all the states. A 'report card' based on varying definitions is not a reliable measure of anything. What is considered a 'serious' discipline in one state may well be differently categorized in another.

HRG ratings are based on data from an annual FSMB report. The FSMB divides disciplinary actions into several categories: A - Loss of License B - Restriction of License, and C - Other Prejudicial Actions. Category C actions have been applied by FSMB to cover reprimands and license modifications. HRG does not consider Category C actions to be "serious" and excluded all category "C" actions in its 2001 rating of Wisconsin disciplinary actions. In excluding "C" actions, HRG omits actions the WMEB often uses to achieve the disciplinary goals of protection and rehabilitation such as the following:

- Because of a surgical error, a doctor is required to complete a risk management program and undergo an on-site assessment of the physician's practice and procedures.
- A doctor receives a formal, written reprimand from the MEB.
- A doctor with an alcohol or drug dependency issue agrees, by stipulation, to an order suspending the license for 5 years, with a stay of suspension so long as the doctor complies with random drug and alcohol screens, attends AA or NA meetings and AODA counseling as prescribed by a supervising health care professional, and agrees to a practice mentor/supervisor.

To conclude that these kinds of remedies for unacceptable practice are not "serious' because the doctor is not revoked or suspended for a period of time ignores the reality of practice and the public health need for competent practitioners. The HRG methodology substitutes a limited opinion of what is "serious" for what is effective board action.

The HRG ranking is derived by dividing the number of 'serious' disciplines by the total number of licensed physicians practicing in the state. To be accurate, a uniform classification across the states is necessary to calculate the total. None exists. Some states have a category for 'retired' physicians; others do not. Some have a system of "active" and "in-active" licenses. Many physicians hold multiple licenses in several states. Just how these totals vary is evident from the reported 2001 totals. The Federation report for 2001 listed 17,559 licensed physicians practicing in the state, however, the number of such in-state physicians according to processing records of the Department of Regulation and Licensing is instead only 12,660. Of course, discrepancies in these totals directly affect the HRG ratings.

Beyond serious statistical problems, some conclusions in the HRG report rest on the faulty premise that the number of physician disciplines in a state somehow translates directly to the quality and safety of patient care. The assessment of the relationship between physician discipline and the quality and safety of health care requires a much more complex equation than put forth by the HRG. For example, one would need to assess the specific complaint process that initiates disciplinary action. Some states may simply have fewer complaints per capita against physicians than others, hence fewer disciplines. Perhaps that translates to *better* care, rather than *poorer* care or dereliction in reporting or a faulty complaint process. One would also need to look at the licensing process itself. Perhaps those states with fewer disciplines have been more careful about the initial licensing process than those states with higher disciplinary rates. The assumption that 'more is better' in looking at physician discipline is simplistic and mere conjecture.

That is not to say that all Medical Examining Boards are working perfectly or that there is not room for improvement. The WMEB is continually studying and revising the disciplinary process to reduce the time interval from complaint to resolution, along with providing easier access for the public to the complaint process itself. Correspondingly, a web site now allows the public to instantly view the licensure status, disciplinary history and disciplinary orders involving any physician in Wisconsin. With whatever improvements are implemented, however, protection of the public continually remains the WMEB's foremost responsibility and priority.

Inappropriate Sexual Conduct Specifically Prohibited

The Medical Examining Board has for many years prosecuted cases involving inappropriate sexual contact between physicians and their patients under § Med 10.02(2)(h), Code. That section reads as follows:

> **Med 10.02 Definitions**. . . . (2) The term "unprofessional conduct" is defined to mean and include but not be limited to the following, or aiding or abetting the same:
> (h) Any practice or conduct which tends to constitute a danger to the health, welfare, or safety of patient or public.

In a recent circuit court case, the board's finding of a violation of the cited section, arising from a respondent's having engaged in a sexual relationship with a patient over a period of approximately eight months, was appealed based in part on the argument that the cited section was vague in terms of what it permitted and prohibited. The court agreed, reversing the board's decision and remanding the case to the board "for either further evidentiary proceedings or for particularly specific findings as to how the danger to patient rule was violated or caused, rather, in this case by improper medical treatment."

Based upon this challenge to the board's interpretation of the so-called "danger rule," it was deemed appropriate to join most of the other health care boards in specifically prohibiting inappropriate sexual contact or behavior with a patient. Also consistent with similar rules promulgated by other affected boards, the patient's status as a patient is extended for two years beyond actual termination of services in order to obviate the possible problem of a licensee summarily terminating treatment immediately upon commencement of improper personal contact with the patient.

The new rule, which went into effect on December 1, 2002, reads as follows:

> **Med 10.02 Definitions**. . . . (2) The term "unprofessional conduct" is defined to mean and include but not be limited to the following, or aiding or abetting the same:

(zd) Engaging in inappropriate sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient. For the purposes of this subsection, an adult receiving treatment shall continue to be a patient for two years after the termination of professional services. If the person receiving treatment is a minor, the person shall continue to be a patient for the purposes of this subsection for two years after termination of services, or for two years after the patient reaches the age of majority, whichever is longer.

Patient's Compensation Fund

Although there are limited exemptions, Wisconsin law requires that physicians maintain primary health care liability insurance and pay an annual assessment for extended liability coverage under the Patient's Compensation Fund (PCF). If a physician fails to pay the required annual fee assessment, the Insurance Commissioner must notify the Medical Examining Board (MEB) and the MEB ". . . may suspend, or refuse to issue or renew the license. . . ." Wis. Stat. § 655.23 (7).

Until recently, when it received notice of non-coverage from the Insurance Commissioner, the MEB withheld license renewal until the physician complied with PCF coverage requirements. The Board has concluded that its past procedure may be inadequate to protect patients. At its December 2002, meeting, the Board voted to change its procedure: when notified that a physician covered under the PCF has not paid a required fee assessment, the MEB will notify the

physician that unless the assessment is paid within 30 days, a formal complaint will be issued, leading to possible discipline, including license suspension.

Each physician is responsible for assuring payments to the PCF are made on time. If a physician delegates the task of making payment to office, hospital or clinic staff, the physician should be certain there is a mechanism in place to inform the physician when PCF fees are due and when made, since it is the physician's license that is in jeopardy for non-payment. Most hospitals require compliance with primary malpractice and PCF coverage as a condition for hospital privileges and those privileges could be in immediate jeopardy if a physician is out of compliance. Specific information about PCF fees and billing is included in rules of the Wisconsin Insurance Commissioner in Wis. Admin. Code ch. Ins 17 available at: www.legis.state.wi.us/rsb/code/ins/ins017.pdf.

Failure to Cooperate with the Board

The Medical Examining Board has been making a concerted effort to shorten the interval from the time a complaint is filed, until it is resolved by either screening panel decision, closing the case after investigation, or discipline of the licensee. As a result, the MEB has progressed from having as many as 600 open cases several years ago, to currently having only 168 open cases, including 42 open for legal action and 14 in hearing status. The timing of the latter two types of cases is beyond the control of the Board. One part of that improvement has been timely cooperation on the part of licensees in providing records, and responding to the so-called "10 day letter" asking the licensee for his or her version of the events put forth in the complaint. Most physicians have been very cooperative with these requests, but in some instances response has not been timely which delays the process. Until now there has been no specific penalty for failure to comply in a timely fashion. For that reason, and in keeping with regulations of some other boards, a rule was adopted that defines such delays, unless there is some extenuating, circumstance, as unprofessional conduct. That new rule reads as follows:

Med 10.02 . . . . Definitions. (2) The term "unprofessional conduct" is defined to mean and include but not be limited to the following, or aiding or abetting the same:

(zc) After a request by the board, failing to cooperate in a timely manner with the board's investigation of a complaint filed against the credential holder. There is a rebuttable presumption that a credential holder who takes longer than 30 days to respond to a request of the board has not acted in a timely manner.

Digest Distribution Options

The Department of Regulation and Licensing is looking at various ways to improve service and at the same time reduce costs relating to our publications. One way to achieve this is by offering licensees the option of receiving the digests via e-mail. This will not only help DRL reduce costs, but will also allow licensees to receive the digests even before the hard copy is printed. Starting in March, the Department's website **www.drl.state.wi.us** will contain a place for licensees to register to receive digests via e-mail. The Department thanks you in advance for your participation in this new distribution system.

Disciplinary Actions

The disciplinary summaries are taken from orders that can be reviewed on the Department of Regulation and Licensing Web site: www.drl.state.wi.us. Click on "Publications" and then "Reports of Decisions" to view the order. Decisions reported below may have an appeal pending and the discipline may be stayed. The current status of the discipline may be viewed on the Department's Web Site under "License Lookup," by calling (608) 266-2112 or by checking the progress of cases in court at: www.courts.state.wi.us.

HERBERT M ALLEN, M.D.
APPLETON, WI REPRIMAND
Negligently treated a patient for multiple personality disorder. Dated 9-25-2002. Wis. Stat. Case #LS0209251MED

THOMAS MICHAEL ROWE, M.D.
STURGEON BAY, WI SUSPENDED
Engaged in a sexual relationship with a patient. Suspended for a minimum of one year, retroactive to July 23, 2001. Sec. 448.02(3),

Wis. Stats. Section Med 10.02(2)(h), Wis. Admin. Code. Case #LS0111191MED

JEFFREY GOTTLIEB, M.D.
PALMER, AK REVOKED
Falsely indicated on his Wisconsin application that he held a medical license in Pennsylvania when he only held a one-year license as a graduate medical trainee. Disciplined by the Alaska Medical Board on the basis that he posed an immediate danger to the public health and safety. Convicted in Alaska of 234 criminal counts. Dated 10-23-2002. Case #LS0206193MED

ATHLENE A ALEXIS, M.D.
BROOKFIELD, WI COSTS/SUSPENDED
Without the owner's consent, removed medication for her own use from the hospital where she worked. Ingested medication that was prescribed for others. Period of suspension to be imposed retroactively. Dated 7-24-2002. Wis. Stats. ss. 943.20(1)(a), 961.38(5), 961.41(3g), Wis. Admin. Code MED 10.02(2)(p), (z). Case #LS0112101MED

JOHN T COATES, M.D.
STEVENS POINT, WI SUSPENDED
Engaged in a sexual relationship with a patient. Suspend for one year. Dated 9-25-2002. Wis. Stat. S. 448.02(3); Wis. Admin. Code MED 10.02(2)(h). Case #LS0209252MED

DALE M BUEGEL, M.D.
MILWAUKEE, WI SUSPENDED/COSTS
Following a hearing the Medical Examining Board suspended his license for an indefinite period of time. Failed to comply with requirements from a previous order issued September 7, 2002. The board's order dated 8-8-2002 corrects scrivener errors in the board's previous order dated 7-24-2002 Dated 8-8-2002. Wis. Admin. Code MED 10.02(2)(b). Case #LS0201021MED

RAYMOND J SZMANDA, D.O.
WAUSAU, WI SURRENDER/COSTS
Abandoned his practice due to mental health issues. Did not notify his patients or provide for coverage. Did not update medical records. Removed prescription medications from his former medical clinic without authorization and without documentation. Issued prescription orders to former patients and family members without conducting a comprehensive examination and without maintaining a patient record. $400.00 costs. Dated 6-19-2002. Med10.02(2)(h),(l),(za), Wis. Admin. Code. Case #LS0206192MED

WANDA M SHEILD, P.A.
OCONOMOWOC, WI REPRIMAND/COSTS
Continued to work after her temporary license expired and before her permanent license could be issued. Dated 10-23-2002. Case #LS0210231MED

THOMAS J STRICK, M.D.
WAUSAU,WI STAYED SUSPENSION/LIMITED
Issued prescription orders in his own name and in the name of relatives to receive medication for his own personal use. Dated 10-23-2002. Wis. Stat. s. 961.38(5); Wis. Admin. Code Med 10.02(2)(h). Case #LS0210232MED

JOHN A FRENZ, M.D.
BRANDON, MS SURRENDER
Surrendered license in connection with charges brought against him by the Mississippi State Board of Medical Licensure. Dated 11-20-2002. Case #LS0209271MED

MARC L SMITH, D.O.
MILWAUKEE WI REPRIMAND/COSTS
Failed to comply with an order of the board. Dated 9-25-2002. Wis. Stat. s. 448.02(3); Wis. Admin. Code MED 10.02(2)(b). Case #LS0207251MED

DAVID D DARCY, M.D.
MARINETTE, WI REPRIMAND/COSTS
Continued to practice after license was suspended. Dated 11-20-2002. Wis. Stat. s. 448.03(1); Wis. Admin. Code Med 10.02(2)(b). Case #LS0211201MED

MILAN A JECKLE, M.D.
SPOKANE, WA SUSPENDED/COSTS
In December 2000 the Washington Department of Health, Medical Quality Assurance Commission imposed disciplinary action against his license. In June 2001 the Idaho State Board of Medicine imposed disciplinary action against his license. Dated 11-22-2002. Wis. Stat. s. 448.02(3). Wis. Admin. Code Med 10.02(2)(q). Case #LS0208221MED Case #LS0208221MED

JEFFREY T JUNIG, M.D.
FOND DU LAC, WI SUSPENDED/COSTS
Diverted medications from the medication cart at his place of employment for his own use. Dated

9-25-2002. Wis. Stat. 961.38(5) Wis Admin Code MED 10.02(2)(i) and (z). Case #LS0209253MED

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WISCONSIN STATUTES AND CODE

Copies of the Wisconsin Statutes and Administrative Code relating to Medicine can be ordered through the Department. Include your name, address, county and a check payable to the Department of Regulation and Licensing in the amount of $5.28.